

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7 Bankruptcy

Debtor.

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**NOTICE OF HEARING AND EXPEDITED MOTION FOR AN ORDER  
AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS AND OTHER  
INTERESTS AND ASSUMPTION AND ASSIGNMENT OF LEASES**

TO: PARTIES SPECIFIED IN LOCAL RULE 9013-3.

1. Randall L. Seaver, the duly-appointed Chapter 7 Trustee in the above-referenced bankruptcy case ("**Trustee**"), moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on September 9, 2009, before the Honorable Robert J. Kressel, United States Bankruptcy Court, Courtroom 8 West, 300 South Fourth Street, Minneapolis, Minnesota 55415.

3. While this is an expedited motion, the notice period is actually larger than a normal motion. Accordingly, any response to this motion must be filed and delivered no later than September 3, 2009 which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 28, 2009, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Rule 5005 of the Federal Rules of Bankruptcy Procedure ("**Bankruptcy Rules**"), and Local Rules 1070-1 and 1073-1. This is a core proceeding. This case was commenced as a Chapter 7 proceeding on June 4, 2009 (the "**Filing Date**"). The case is now pending before this Court.

5. This Motion arises under 11 U.S.C. §§363 and 365 and Bankruptcy Rule 6004. The Trustee seeks to sell and assign Debtor's membership interest, specifically, Ownership Interest Numbers 157, 186, 270, 271 and 363 in Bayport Marina Association, Inc. ("**Membership Interests**"). Further, the Trustee seeks to assume and assign the Member Power Boat Slip Lease Agreements ("**Slip Contracts**") which correspond to the Membership Interests. The documentation evidencing the Membership Interests and Slip Contracts is attached hereto as Exhibit A.

6. Ownership of the Membership Interests entitles the owner to enter into the Slip Contracts.

7. Debtor has also subleased the slips subject to the Slip Contracts to third parties pursuant to separate lease agreements ("**Subleases**"). Copies of the Subleases are attached hereto as Exhibit B.

8. The Trustee will assume and assign the Slip Contracts and Subleases ("**Contracts**") to Buyer.

9. The Trustee received an offer of \$1.1 million dollars from Hasse A&Y, LLC ("**Buyer**") to purchase the Membership Interests on or before September 10, 2009 ("**Offer**"). A copy of the term sheet is attached hereto as Exhibit C. Buyer is a Delaware limited liability corporation and the Trustee is unaware of any relationship or affiliation of the Buyer with the Debtor, his agents or assigns.

10. The terms of purchase are more specifically described in the Offer.

11. The Trustee believes that the sum of \$16,014.41 is required to cure amounts due on the Slip Contracts and the Trustee proposes to pay said amount from the sale proceeds.

12. The sale will be free and clear of interest of any parties. The net proceeds of the sale would be subject to any secured party's interests and would be held in the trustee's trust account subject to further order of the Court with the exception that the Trustee will surcharge the proceeds in the amount of \$50,000.00 pursuant to 11 U.S.C. §506(c) and the consent of alleged secured creditors, Crown Bank and Chrysler Financial Services Americas LLC ("Chrysler Financial").<sup>1</sup>

13. The Trustee expects that other potential buyers may want to be heard on this Motion.

14. Other interested buyers may give notice of their desire to outbid Buyer at least 24 hours prior to the hearing. The Trustee will entertain other offers made in \$10,000.00 increments over Buyer's offer. Buyer has requested a \$5,000.00 "break up fee" which the Trustee will honor with the proceeds of the highest bidder and the Trustee seeks Court approval to do the same.

15. The highest bidder must be able to close immediately after Court approval of the sale of Membership Interests and assumption and assignment of Contracts.

16. Expedited relief is required as Buyer desires approval by September 10, 2009. Bankruptcy Rule 2002 requires 20 days notice by mail and this motion is being served and filed with 19 days notice by mail.

17. Pursuant to Local Rule 9013-2(c), the Trustee gives notice that he may, if necessary, testify at the hearing regarding the proposed sale.

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<sup>1</sup> Crown Bank and Chrysler Financial each asserts a perfected security interest in the Asset and Contracts. Crown Bank has other collateral, namely a lot in Brainerd, MN estimated to have a value of \$400,000.00. Crown Bank has consented to the Trustee's additional surcharge of \$50,000.00 when the Brainerd lot is sold.

**WHEREFORE**, the Trustee moves the Court for an order authorizing a sale of the Membership Interests of the Debtor free and clear of interests and assumption and assignment of the Contracts, and granting such other relief as the Court may deem just and equitable.

**LEONARD, O'BRIEN  
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: August 25, 2009

By \_\_\_\_\_  
Matthew R. Burton, #210018  
Attorneys for Randall L. Seaver, Trustee  
100 South Fifth Street, Suite 2500  
Minneapolis, Minnesota 55402  
(612) 332-1030

**VERIFICATION**

I, Randall L. Seaver, Trustee for the Bankruptcy Estate of Dennis E. Hecker named in the foregoing Notice of Hearing and Motion declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on August 25, 2009

/e/ Randall L. Seaver

\_\_\_\_\_  
Randall L. Seaver, Trustee

407701

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7 Bankruptcy

Debtor.

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**MEMORANDUM IN SUPPORT OF MOTION AUTHORIZING SALE OF ASSETS  
AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS**

Randall L. Seaver, Trustee (“Trustee”) seeks approval of the sale of membership interests and concomitant executory contracts related to Debtor's boat slips at the Bayport Marina.

Section 363 of the Bankruptcy Code provides, in part, as follows:

(b)(1) The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.

Section 365 of the Bankruptcy Code provides, in part, as follows:

(a) Except as provided in Section 765 and 766 of this title and in subsections (b), (c), and (d) of this Section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

The Trustee seeks to make the sale of the membership interests and to assume and assign the executory contracts to Hasse A&Y, LLC or the highest bidder at the time of the hearing. The Trustee is seeking to surcharge the proceeds in the amount of \$50,000.00 pursuant to 11 U.S.C. §506(c) and the consent of the known alleged secured creditors, Crown Bank and Chrysler Financial Services Americas LLC. The Trustee believes that it is in the estate's best interest, and in the best interest of its creditors, that the Court approve the motion before the Court.

Expedited relief is need under Local Rule 9006-1(e), as Buyer needs approval by September 10, 2009 and this motion does not comply with Bankruptcy Rule 2--2 (i.e, not 20 days notice by mail).

**LEONARD, O'BRIEN  
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: August 24, 2009

By \_\_\_\_\_  
Matthew R. Burton, #210018  
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100 South Fifth Street, Suite 2500  
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(612) 332-1030

407702

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7

Debtor.

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**UNSWORN CERTIFICATE OF SERVICE**

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I hereby certify that on August 25, 2009, I caused the following documents:

***Notice of Hearing and Motion for an Order Authorizing Sale of Assets Free and Clear of Liens and Other Interests and Assumption and Assignment of Leases, Memorandum in Support of Motion Authorizing Sale of Assets and Assumption and Assignment of Executory Contracts, and Proposed Order.***

to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

- Patti H Bass    ecf@bass-associates.com
- Bruce H. Carlson    bruce.carlson@mlcfargolaw.com, tricia.fossen@mlcfargolaw.com
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- Matthew A Swanson    matthew.swanson@leonard.com, callie.sanford@leonard.com
- US Trustee    ustpregion12.mn.ecf@usdoj.gov

I further certify that I caused a copy of the foregoing documents to be faxed, e-mailed and/or mailed by first class mail, postage paid, to the following:

**SEE ATTACHED SERVICE LIST**

Dated: August 25, 2009

/e/ Stephanie Wood

---

Stephanie Wood  
100 South Fifth Street, Suite 2500  
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(612) 332-1030

407733

**DENNIS E. HECKER**  
**BKY CASE NO. 09-50779**  
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GRAND FORKS ND 58201

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MENDOTA HEIGHTS MN 55120

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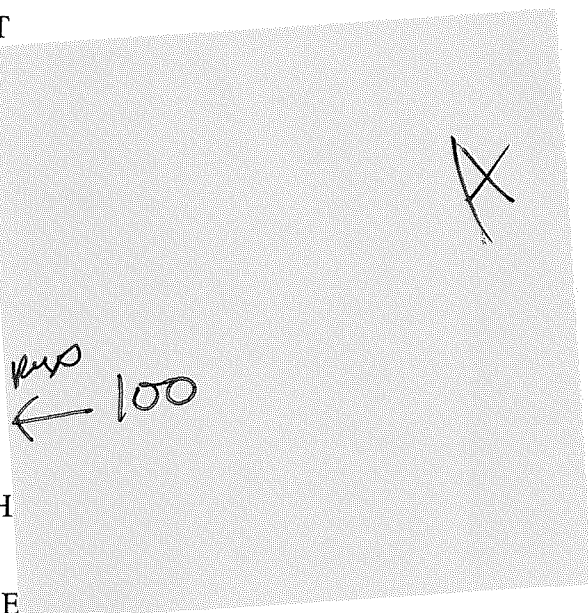
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TOYOTA MOTOR CREDIT CORP  
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C/O DAVID GALLE  
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WELLS FARGO BANK N.A.  
LOAN ADJUSTMENT GROUP  
90 SOUTH 7TH STREET  
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WELLS FEDERAL BANK  
53 FIRST ST. SW  
WELLS MN 56097

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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In re:

BKY No. 09-50779

Dennis E. Hecker,

Chapter 7 Bankruptcy

Debtor.

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**ORDER AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
INTERESTS AND FOR ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS**

The above matter came before the Court on the Motion of Randall L. Seaver, Trustee ("Trustee") seeking an order authorizing sale of assets free and clear of interests and for assumption and assignment of executory contracts. More specifically, the Trustee seeks an Order (1) authorizing the sale of Debtor's membership interests, specifically, Ownership Interest Numbers 157, 186, 270, 271 and 363 in Bayport Marina Association, Inc. ("**Membership Interests**") to Hasse A&Y, LLC ("**Buyer**") free and clear of all liens, claims, interests and encumbrances; and (2) authorizing and approving the assumption and assignment to Buyer of Member Power Boat Slip Lease Agreements ("**Slip Contracts**") and Debtor's subleases ("**Subleases**") (together referred to as "**Contracts**"). It appearing that no other or further notice need be given; a hearing on the Sale Motion having been held before this Court on \_\_\_\_\_, 2009 (the "**Sale Hearing**"); all objections having been resolved, overruled or withdrawn, the arguments of counsel and the record of the Sale Hearing; and after due deliberation thereon and good cause appearing therefore:

**IT IS HEREBY FOUND AND DETERMINED THAT:**

1. The Trustee's request for expedited relief is granted.
2. This Court has jurisdiction to hear and determine this Motion pursuant to 11 U.S.C.

§§157 and 1334 and Local Rule 1070-1.

3. The Notice of the Motion and of the hearing was sufficient.

4. The sale of Membership Interests to \_\_\_\_\_  
and assumption and assignment of the Contracts is hereby authorized under 11 U.S.C. §363(b) and §365 of the Bankruptcy Code in a form as substantially proposed by the Trustee.

5. The assumption and assignment of the contracts is authorized under §365 of the Bankruptcy Code.

6. The Trustee and \_\_\_\_\_,  
through any corporate officer, are authorized and directed to execute and deliver, and empowered to fully perform under, consummate and implement, the sale and assignment, together with all additional instruments and documents that may be reasonably necessary or desirable to implement such agreements, and to take all further actions as may be reasonably requested by the parties for the purpose of assigning, transferring, granting, conveying and conferring to \_\_\_\_\_, or reducing to possession, any or all Membership Interests and Contracts, or as may be necessary or appropriate to the performance of the obligations of the Trustee.

7. Pursuant to 11 U.S.C. §365, the Trustee is authorized to assume the Slip Contracts between the Debtor and Bayport Marina Association, Inc., as well as the Subleases.

8. The Trustee is authorized to assign the Contracts to \_\_\_\_\_  
with all the rights and obligations, claims, and liabilities of the Debtor under the Contracts. Further, the Trustee shall cure the arrearages to Bayport Marina, Inc., estimated to be \$16,014.41, from the proceeds of this sale.

9. Pursuant to 11 U.S.C. §§ 105(a), 363(b) and 363(f)(3), the Membership Interests shall be transferred to \_\_\_\_\_

free and clear of all claimed liens, claims and interest, with such liens, claims and interests, if any, to attach to the proceeds in the same dignity, priority and effect as they held at the commencement of the case with the exception that the Trustee may surcharge the proceeds in the amount of \$50,000.00.

The Trustee shall hold the net proceeds of the sale in the Trustee's trust account subject to further order of the Court.

10. \_\_\_\_\_ has acted in good faith within the meaning of 11 U.S.C. §363(m).

11. This Court retains exclusive jurisdiction to (i) enforce and implement the terms and provisions of the Sale and each of the agreements executed in connection therewith, (ii) compel delivery of the Membership Interests to \_\_\_\_\_, (iii) resolve any disputes arising under or related to the Sale Motion, except as otherwise provided therein, (iv) enjoin the assertion of Claims against Buyer or the Membership Interests, and (v) interpret, implement and enforce the provisions this Sale Order.

12. Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), and as provided by Bankruptcy Rule 7062, this Sale Approval Order shall be effective and enforceable immediately upon entry.

**BY THE COURT:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Robert J. Kressel  
U.S. Bankruptcy Court Judge

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